



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 144 OF 2014

NAIROBI CITY COUNTY.....PLAINTIFF/DECREE HOLDER

=VERSUS=

HABIBA A. H.HAWA & 3 OTHERS.....DEFENDANTS/JUDGEMENT DEBTORS

=AND=

ATTAIN ADVISORY CONSULTANTS LTD.....PURCHASER

P G WAWERU T/A IDEAL AUCTIONEERS.....1ST INTERESTED PARTY

CHIEF LAND REGISTRAR.....2ND INTERESTED PARTY

RULING

1. On 29th January 2018, the Counsel for the Plaintiff on the one part and Counsel for the second, third and fourth defendants on the other part asked the Court to adopt a Consent which they had filed in Court on 20th December 2017, as Order of the Court. The Consent was compromising an amended Notice of Motion dated 19th October 2017, brought by the second, third and fourth defendants.
2. The Consent was meant to resolve a dispute which originated from a suit filed by Nairobi City Council against **Habiba Abdul Herman Hawa**. The City Council was claiming arrears of rates. This suit proceeded ex-parte on the basis that the defendant had been served with summons to enter appearance.
3. The suit was filed in the City Court in the year 2013. Though proceedings proceeded on the basis that the defendant had been served with summons, the truth of the matter is that the defendant had died in the year 2010 long before the suit was filed. The decree holder (Nairobi City Council) proceeded to sell **LR No.209/403/3** to recover the alleged rates arrears.
4. The auctioned property was purchased by Attain Advisory Consultants Limited. The auctioned property had been registered in the joint names of the deceased who is the first defendant and the second, third and fourth defendants as tenants in common in equal shares. Somehow the parties concerned in this matter realized that they could not perfect the sale and have the transfer registered in the name of the purchaser without bringing on board the second, third and fourth defendants.
5. Ex-parte applications were made to amend the decree to include the second, third and fourth defendants as Judgement debtors for purposes of execution. All these ex-parte applications were allowed by the Court. Transfer documents were signed by the Deputy Registrar upon Court orders issued. The auctioned property was finally registered in the name of the purchaser M/s Attain Advisory Consultants Limited. It is after the purchaser went to demand rent from the tenants in the auctioned property that the second, third and fourth defendants were alarmed. This is what triggered this case which has culminated in the consent.
6. The purchaser M/s Attain Advisory Consultants Limited have opposed the adoption of the consent on the ground that they are purchaser of the property in question and that they are not party to the consent. They want the consent shelved so that the Court can determine the application which is pending before the Court.
7. The decree holder has conceded and rightly so that the auction process and the proceedings which resulted to the same were irregular and that the proceedings in the lower Court as well as the auction should be set aside. The consent is meant to resolve a process which was *irregular ab initio*. I do not see why the purchaser should oppose the adoption of the consent. The proceedings in the Lower Court were filed against a person who had already died. This in itself is irregular and any judgement flowing from those proceedings is *null* and *void* and can even be set aside *ex- debito justitiae*.

8. No Court of Law can allow a party to benefit from an irregular judgment when the irregularity has been brought to the Court's attention. The purchaser was aware of the futility of the Judgement which had been obtained against one co-owner of the purchased property who in any case had died before the suit was filed. The purchaser then moved the Court ex-parte to amend the decree to include the second, third and fourth defendants who were not given an opportunity to be heard. I therefore find the purchasers objection to be without merit. The same is rejected and the Consent filed in Court on 20th December 2017, is hereby adopted as order of the Court.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 22nd day of February 2018.

E. O. OBAGA

JUDGE

In the presence of :

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Court Assistant: Hilda

E.O.OBAGA

JUDGE